In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2012

SEATTLE TRUST & SAVINGS BANK, ET AL., PETITIONERS

v.

THE BANK OF CALIFORNIA, N.A., AND THE COMPTROLLER OF THE CURRENCY

No. 73-2037

WILLIAM L. HART, SUPERVISOR, DIVISION OF BANKING, ETC., PETITIONER

v.

THE BANK OF CALIFORNIA, N.A., AND JAMES E. SMITH, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE COMPTROLLER OF THE CURRENCY IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-10[1]) is reported at 492 F. 2d 48. The opinion of the district court (Pet. App. A-11 to A-16) is unreported.

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[1]All "Pet. App." references are to the appendix to the petition in No. 73-2012.

JURISDICTION

The judgment of the court of appeals was entered on January 30, 1974, and a timely petition for rehearing was denied on April 18, 1974. The petitions for writs of certiorari were filed on July 10, 1974 (No. 73-2012) and July 17, 1974 (No. 73-2037). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether, in approving a branch banking application, the Comptroller of the Currency and both courts below properly determined that:

1. For purposes of 12 U.S.C. 36(c), The Bank of California is "situated" in the City of Seattle, State of Washington, where it has maintained banking offices since 1905; and

2. For purposes of Section 30.40.020 of the Revised Code of Washington Ann., the "principal place of business" of the bank of California is its principal place of business in Washington, *i.e.*, Seattle.

STATUTES INVOLVED

12 U.S.C. 36(c) provides in pertinent part:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically

granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks * * *

Revised Code of Washington Ann., Section 30.40.020 (1973) provides in pertinent part:

> A bank or trust company having a paid-in capital of not less than five hundred thousand dollars may, with the approval of the supervisor, establish and operate branches in any city or town within the state. * * *
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> * * * * *
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> No bank or trust company shall establish or operate any branch, except a branch in a foreign country, in any city or town outside the city or town in which its principal place of business is located in which any bank, trust company or national banking association regularly transacts a banking or trust business, except by taking over or acquiring an existing bank, trust company or national banking association or the branch of any bank, trust company or national banking association operating in such city or town.

STATEMENT

The Bank of California was organized in 1864 as a California state bank, and in 1910 it converted to a national bank (Pet. App. A-19). It acquired an existing bank with offices in Seattle and Tacoma, Washington and Portland, Oregon in 1905, and has operated those offices continuously since that time (*ibid*).

In July 1970, The Bank of California applied to the Comptroller of the Currency for permission to relocate its existing office in Seattle to a new location in

that city, and to establish a new branch at the site of its old Seattle office (Pet. App. A-17). The Comptroller notified the Washington Supervisor of Banking and competing banks of the application and, when no objections were received to the proposed relocation of the existing office, that portion of the Bank's application was authorized by the Comptroller (Pet. App. A-17 to A-18. A number of protests were received, however, to the Bank's proposal to establish a new branch at the site of its old office (Pet. App. A-18).

Following the submission of information and briefs by The Bank of California and the protestors, an investigative report by a national bank examiner, and analyses and recommendations by his staff concerning the economic, banking, competitive, and legal factors involved, the Comptroller authorized The Bank of California to establish a branch bank at the site of its old office (Pet. App. A-17 to A-31). The Comptroller noted that none of the objectors had "contested the economic justification and practical competitive pressures which promoted" the bank's application (Pet. App. A-21). In this regard, the Comptroller observed that Washington's economy showed stable long-term growth and that Seattle was the leading service center for the Pacific Northwest (Pet. App. A-18 to A-19). The Comptroller accepted The Bank of California's position that its old Seattle office had become crowded and inefficient and that the only solution was to relocate into new facilities (Pet. App. A-17, A-20). The Comptroller also agreed with the Bank that unless it could maintain its old Seattle office as an additional branch after relocation, some of its existing customers would transfer their accounts to the many competing banks in the immediate vicinity (Pet. App. A-21). The Comptroller found that within a one mile radius of the Bank's present office, eleven other

banks maintained a total of thirty-seven banking offices (Pet. App. A-20). Twenty-seven of these offices were maintained by five of the protesting banks (Ad. File 31-32, 258-261A[2]). The Comptroller also rejected the argument that federal and state laws prohibit The Bank of California from establishing a second office in Seattle.

Petitioners then brought this action to enjoin The Bank of California from establishing the Seattle office. Both the district court and the court of appeals sustained the Comptroller's decision (Pet. App. A-10).

ARGUMENT

This case does not warrant review by this Court because it involves an application of the federal and Washington branch banking statutes to the unique circumstances presented here, rather than a decision of general application. Moreover, the Comptroller's decision is correct and was properly sustained by the courts.

Petitioners' main contention is that a bank with branches in more than one state can be "situated" only in one of them. Only two national banks have offices in more than one state (Pet. App. A-22). These two banks were expressly permitted to continue their interstate operations by the "grandfather clause" of the McFadden Act of 1927, Section 7, 44 Stat. 1228, now 12 U.S.C. 36(a) and (b). Thus, the issue of whether a national bank can be "situated" in a state other than the state where its main office is located could arise only in branch banking applications of two banks. More-

[2]"Ad. File" refers to the Comptroller's administrative file which is Exhibit A to the court of appeals record.

over, because no other national or state bank in Washington has an office outside that State (C.A. Record, 248, 292), only a branch application by The Bank of California could present the issue of whether "principal place of business" as used in R.C.W.A. 30.40.020 means principal place of business in that State. The questions petitioners raise are therefore unique and this case thus lacks widespread importance or precedential impact.

In any event, both the district court and the court of appeals correctly sustained the Comptroller's decision. The Comptroller's holding that The Bank of California is "situated" in Washington under 12 U.S.C. 36(c), is supported by the ordinary meaning of that term because the Bank has conducted business there continuously for nearly seventy years. Moreover, for purposes of many other provisions of the National Bank Act that govern essential functions of national banks by incorporating the laws of the State where the bank is "located," Washington, not California, law governs The Bank of California's Washington activities (see Pet. App. A-6).[3]

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[3] *E.g.*, 12 U.S.C. 24 (charitable contributions); 12 U.S.C. 85 (interest rates chargeable); 12 U.S.C. 90 (security for public funds); 12 U.S.C. 92a (power of trustee); 12 U.S.C. 371a (interest rates payable).

For purposes of 28 U.S.C. 1348, which provides that national banks shall "be deemed citizens of the States in which they are respectively located," The Bank of California has been held to be a citizen only of California. *American Surety Co.* v. *Bank of California*, 133 F. 2d 160 (C.A. 9). As the Comptroller correctly held (Pet. App. A-24, n. 3), however, this jurisdictional holding is not a persuasive precedent for the present case because that doctrine, unlike 12 U.S.C. 36(c) and the other banking provisions cited above, is not based upon considerations of competitive equality.

In addition, the Comptroller's decision is supported by the policy of competitive equality between state and national banks, which 12 U.S.C. 36(c) was intended to achieve. See *First National Bank of Logan* v. *Walker Bank & Trust Co.*, 385 U.S. 252, 261. Both courts below (Pet. App. A-10, A-14) sustained the Comptroller's factual finding that The Bank of California will sustain a competitive disadvantage unless it is allowed to branch in Seattle as the petitioning banks and its other competitors have done (Pet. App. A-25). Indeed, the fact that the petitioning banks maintain twenty-seven different banking offices— more than twice the number of ten years ago—within one mile of The Bank of California's old Seattle office (Pet. App. A-8; Ad. File, 31-32, 258-261A) demonstrates that convenience of location is a very important factor in banking competition in Seattle. See *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 358.

The Comptroller also correctly applied the Washington branch banking provision, R.C.W.A. 30.40.020, which had not previously been construed by any state or federal court (Pet. App. A-28). His ruling under that provision the "principal place of business" of The Bank of California is Seattle rather than a location in California, which both courts below upheld, involves a question of State law, which does not warrant review by this Court.

In any event, because all other Washington state and national banks have a "principal place of business" in Washington, they may establish branches within at least that city or town. The Comptroller's construction of "principal place of business" to mean "principal place of business within Washington" thus fosters the policy of competitive equality by allowing The Bank of

California that same right to branch in the city of its Washington headquarters, Seattle. Moreover, it is unlikely the draftsmen of R.C.W. 30.40.020 intended any other construction inasmuch as all state banks regulated by this provision have their principal places of business within the State. Nor do petitioners contest the court of appeals' conclusion that "[i]n day to day administration of banking activities within Washington, the [State Banking] Supervisor has treated Seattle as the principal place of business of The Bank of California" (Pet. App. A-9 to A-10; see Pet. App. A-30, n. 9). The statutory policy of competitive equality, the probable legislative intent, and the administrative practice, therefore, all confirm the correctness of the Comptroller's construction of R.C.W.A. 30.40.020.

CONCLUSION

It is therefore respectfully submitted that the petitions for writs of certiorari should be denied.

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